

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FILED BY 8 D.C.
05 NOV -9 AM 8:41

THOMAS H. COULD
CLERK, U.S. DISTRICT COURT
W.D. OF TENN. JACKSON

KEVIN AND JEANNIE SMITH,)

Plaintiffs,)

v.)

NO. 03-1255 T/An

WILLIAMS MARK FRANKS,)
d/b/a FRANKS TRUCKING,)

Defendant.)

KEVIN AND JEANNIE SMITH,)

Plaintiffs,)

v.)

NO. 03-1322 T/An

HOME-MART, INC.,)

Defendant.)

ORDER DENYING MOTION FOR RELIEF

Before the Court is Plaintiff Jeannie Smith's ("Mrs. Smith") Motion to Amend Complaint filed on August 22, 2005. Although the Court previously granted Mrs. Smith's Motion due to a misreading of the Certificate of Consultation, the Court subsequently granted the Defendants' Joint Motion to Reconsider Approving Jeannie Smith's Motion to Amend Complaint on August 31, 2005. For the following reasons, Mrs. Smith's Motion is **DENIED**.

Background

On July 13, 2005 and July 25, 2005, Plaintiff Kevin Smith (“Mr. Smith”) filed a Motion to Amend Complaints and a Motion to Amend 16(b) Scheduling Order, respectively. Both motions were denied by this Court on August 16, 2005, and Mr. Smith filed a Motion for Relief from Order Denying Motion to Amend Complaints and Order Denying Motion to Amend Scheduling Order on August 25, 2005, in an attempt to obtain relief from the Court’s previous denial. The Court again denied Mr. Smith’s motion for relief due to untimeliness and undue prejudice to the Defendants.

In the interim, Mrs. Smith also filed a Motion to Amend Complaint on August 22, 2005. In her Memorandum of Law in Support of Motion to Amend Complaint, Mrs. Smith states, “Plaintiff Kevin Smith’s Memorandum of Law in Support of Motion to Amend Complaint is hereby adopted and incorporated by reference as if stated verbatim herein.” (D.E. #66). She does not point the Court to any other basis upon which to grant her motion.

Analysis

Mrs. Smith’s Memorandum of Law in Support of her Motion to Amend relies on the same arguments that Mr. Smith has already advanced in his Motion to Amend Complaint of July 13, 2005, and his Motion for Relief of August 25, 2005. Both motions were unsuccessful because Mr. Smith’s arguments concerning the untimeliness of the motion were not persuasive to the Court and granting the Motion to Amend would result in undue prejudice to the Defendants. Therefore, because Mrs. Smith is basing her Motion to Amend on the same arguments that this

Court has denied twice, her Motion to Amend is **DENIED**.

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "S. Thomas Anderson", written over a horizontal line.

S. THOMAS ANDERSON
UNITED STATES MAGISTRATE JUDGE

Date: November 08, 2005



Notice of Distribution

This notice confirms a copy of the document docketed as number 98 in case 1:03-CV-01255 was distributed by fax, mail, or direct printing on November 14, 2005 to the parties listed.

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Honorable James Todd
US DISTRICT COURT